

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

BANK OF THE WEST, a California banking  
corporation,

Plaintiff,

v.

DON G. WHITE, et al.,

Defendants.

CASE NO. 2:08-cv-01658-KJD-RJJ

**ORDER GRANTING MOTION FOR  
SUMMARY JUDGMENT, FINDINGS OF  
FACT AND CONCLUSIONS OF LAW**

This matter came before this Court on Plaintiff Bank of the West's (the "Bank" or "Plaintiff") Motion for Summary Judgment, Memorandum of Points and Authorities in Support of Motion (1) for Summary Judgment, or in the Alternative, Partial Summary Judgment; and (2) to Determine Fair Value of Real Property (the "Motion") [Dkt. No. 32], filed with the Court on August 28, 2009. The Court considered the Separate Statement of Uncontroverted Material Facts in Support of Motion (1) for Summary Judgment, or in the Alternative, Partial Summary Judgment; and (2) to Determine Fair Value of Real Property [Dkt. No. 32], the Declaration of Robert B.

1 Kaplan in Support of Motion (1) for Summary Judgment, or in the Alternative, Partial Summary  
2 Judgment; and (2) to Determine Fair Value of Real Property [Dkt. No. 32]; the Declaration of  
3 Noreen Gouveia in Support of Motion (1) for Summary Judgment, or in the Alternative, Partial  
4 Summary Judgment [Dkt. No. 34]; the Declaration of Keith Harper in Support of Motion (1) for  
5 Summary Judgment, or in the Alternative, Partial Summary Judgment; and (2) to Determine Fair  
6 Value of Real Property [Dkt. No. 36], and the accompanying exhibits thereto, filed in support of the  
7 Motion, each filed by the Bank on August 28, 2010. The Court also considered Defendants'  
8 Request for Hearing and Appointment of Independent Appraiser Pursuant to NRS 40.475, filed  
9 September 23, 2009 [Dkt. No. 37], and Plaintiff's Opposition to Defendants' Request for Hearing  
10 and Appointment of Independent Appraiser Pursuant to NRS 40.475, filed October 7, 2009 [Dkt.  
11 No. 38].

12 On March 16, 2010, the Court issued a Minute Order in Chambers (the "Minute Order")  
13 [Dkt. No. 39], in connection with Plaintiff's Motion for Summary Judgment, and ordered  
14 Defendants to submit evidence demonstrating an actual question of fact regarding the valuation of  
15 the subject property no later than March 23, 2010. In the Minute Order, the Court ordered that the  
16 affidavit submitted with Defendants' Request for Hearing and Appointment of Independent  
17 Appraiser does not meet Defendants' obligations under Federal Rule of Civil Procedure 56(e)(2).  
18 Under the Minute Order, the Court ordered that failure to submit appropriate evidence will result in  
19 summary judgment being entered against them, setting the hearing for March 25, 2010.

20 On March 24, 2010, in connection with the Court's March 16, 2010 Minute Order, the Court  
21 issued a Minute Order in Chambers [Dkt. No. 40], relating to Plaintiff's Motion for Summary  
22 Judgment, finding that Defendants failed to file any evidence in response to the Court's Minute  
23 Order, and vacated the hearing scheduled for March 25, 2010.

24 The Court having reviewed the Motion for Summary Judgment, and good cause appearing  
25 therefore, the Court enters the following Findings of Fact and Conclusions of Law. To the extent  
26 that a Finding of Fact should properly be designated as a Conclusion of Law, it shall be deemed a  
27 Conclusion of Law. To the extent that a Conclusion of Law should properly be designated a  
28 Finding of Fact, it shall be deemed a Finding of Fact.

**I. FINDINGS OF FACT**

1. Effective as of August 25, 2006, Saddle Ridge Residential, LLC (“Saddle Ridge” or “Borrower”) executed that certain Construction Loan Agreement in favor of Bank wherein Bank agreed to make various extensions of credit to Borrower subject to the terms and conditions set forth therein (the “Loan Agreement No. 1”).

2. On or about August 25, 2006, Borrower executed in favor of Bank a Promissory Note in the original principal amount of \$4,505,000.00 (the “Note No. 1”).

3. In order to secure repayment of all obligations owed by Borrower to Bank pursuant to the Note No. 1 and the Loan Agreement No. 1, Borrower, as trustor, executed and delivered to Bank that certain Deed of Trust dated as of August 25, 2006 (the “Deed of Trust No. 1”) in favor of First Santa Clara Corporation, as trustee, for the benefit of Bank, as beneficiary, with respect to the Real Property located in Clark County, State of Nevada (“Property No. 1”), which was recorded on September 1, 2006 in the Official Records of the Clark County Recorder's Office.<sup>1</sup>

4. An Event of Default (as defined in the Loan Documents No.1) occurred under the Loan Documents No. 1 because of, inter alia, the failure of Borrower to pay all outstanding obligations due and owing pursuant to the Note No. 1 on its maturity date of September 5, 2007.

5. Bank demanded that Borrower repay to Bank all outstanding obligations due and owing by Borrower to Bank pursuant to the Loan Documents No. 1, but Borrower wholly failed, refused, and neglected to pay said sums and such failure continues to the date hereof.

6. Bank has duly performed all the conditions precedent on its part required to be performed under the terms of the Loan Documents No. 1.

7. On or about August 25, 2006, defendants Don G. White (“White”), Nevada Pacific Housing Corporation (“Nevada Pacific”), formerly known as Pageantry Communities, Incorporated, and Pageantry Development Corporation (“Pageantry Development”) and Western Residential Housing, LLC formerly known as Pageantry Residential, LLC (“Western Residential” and

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<sup>1</sup> The Loan Agreement No. 1, the Note No. 1, the Deed of Trust No. 1, and any other documents executed, delivered, or required in connection with any of the foregoing are hereinafter collectively referred to as the “Loan Documents No. 1”.

1 collectively with White, Nevada Pacific, and Pageantry Development the “Guarantors”) each made,  
2 executed and delivered to Bank their respective Commercial Guaranties (collectively, the  
3 “Guaranties No. 1”).

4 8. Pursuant to the terms of the Guaranties No. 1, Guarantors agreed to guarantee full  
5 and punctual payment and satisfaction of the Indebtedness (as defined in the Guaranties No. 1) of  
6 Borrower to Bank and the performance and discharge of all Borrower's obligations under the Loan  
7 Documents No. 1, as more specifically set forth therein.

8 9. Prior to the commencement of this action, Bank made demand on Guarantors for  
9 payment of the obligations sued upon herein based upon the Guaranties No. 1, but Guarantors  
10 failed, refused, and neglected to pay said sum or any sum.

11 10. Pursuant to the terms of the Guaranties No. 1, Guarantors agree to pay Bank all  
12 reasonable attorney's fees, costs and expenses incurred by Bank in connection with the enforcement  
13 of Bank's rights under the Guaranties No. 1.

14 11. Effective as of February 12, 2007, Borrower executed that certain Construction Loan  
15 Agreement in favor of Bank wherein Bank agreed to make various extensions of credit to Borrower  
16 subject to the terms and conditions set forth therein (the “Loan Agreement No. 2”).

17 12. Effective as of February 12, 2007, Borrower executed in favor of Bank a Loan  
18 Extension Agreement (the “Loan Extension No. 1”) which amended certain terms of the Loan  
19 Agreement No. 2.<sup>2</sup>

20 13. On or about February 12, 2007, Borrower executed in favor of Bank a Promissory  
21 Note in the original principal amount of \$5,215,000.00 (the “Note No. 2”).

22 14. In order to secure repayment of all obligations owed by Borrower to Bank pursuant  
23 to the Note No. 2 and the Amended Loan Agreement No. 2, Borrower, as trustor, executed and  
24 delivered to Bank that certain Deed of Trust dated as of June 20, 2006 (the “Deed of Trust No. 2”)   
25 in favor of First Santa Clara Corporation, as trustee, for the benefit of Bank, as beneficiary, with  
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27 <sup>2</sup> The Loan Agreement No. 2 and the Loan Extension No. 1 are hereinafter collectively referred to as the “Amended  
28 Loan Agreement No. 2”.

1 respect to the Real Property located in Clark County, State of Nevada ("Property No. 2"). The Deed  
2 of Trust No. 2 was recorded on February 28, 2007 in the Official Records of the Clark County  
3 Recorder's Office.<sup>3</sup>

4 15. An Event of Default (as defined in the Loan Documents No. 2) occurred under the  
5 Loan Documents No. 2 because of, inter alia, the failure of Borrower to pay all outstanding  
6 obligations due and owing pursuant to the Note No. 2 on its maturity date of June 5, 2008.

7 16. Bank demanded that Borrower repay to Bank all outstanding obligations due and  
8 owing by Borrower to Bank pursuant to the Loan Documents No. 2, but Borrower wholly failed,  
9 refused, and neglected to pay said sums and such failure continues to the date hereof.

10 17. Bank has duly performed all the conditions precedent on its part required to be  
11 performed under the terms of the Loan Documents No. 2.

12 18. On or about February 12, 2007, Guarantors each made, executed and delivered to  
13 Bank their respective Commercial Guaranties (collectively, the "Guaranties No. 2").

14 19. Pursuant to the terms of the Guaranties No. 2, Guarantors agreed to guarantee full  
15 and punctual payment and satisfaction of the Indebtedness (as defined in the Guaranties No. 2) of  
16 Borrower to Bank and the performance and discharge of all Borrower's obligations under the Loan  
17 Documents No. 2, as more specifically set forth therein.

18 20. Prior to the commencement of this action, Bank made demand on Guarantors for  
19 payment of the obligations sued upon herein based upon the Guaranties No. 2, but Guarantors  
20 failed, refused, and neglected to pay said sum or any sum.

21 21. Pursuant to the terms of the Guaranties No. 2, Guarantors agree to pay Bank all  
22 reasonable attorney's fees, costs and expenses incurred by Bank in connection with the enforcement  
23 of Bank's rights under the Guaranties No. 2.

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27 <sup>3</sup> The Amended Loan Agreement No. 2, the Note No. 2, the Deed of Trust No. 2, and any other documents executed,  
28 delivered, or required in connection with any of the foregoing are hereinafter collectively referred to as the "Loan Documents No. 2".

1           22.       On December 3, 2008, Bank recorded a separate Notice of Breach and Default and  
2 of Election to Cause Sale of Real Property Given Under Deed of Trust with respect to Deed of Trust  
3 No. 1 and Deed of Trust No. 2 in the Official Records of the Clark County Recorder's Office.

4           23.       On June 3, 2009, Bank caused the recordation of a separate Substitution of Trustee  
5 for Deed of Trust No. 1 and Deed of Trust No. 2, substituting Fidelity National Title Insurance  
6 Company as trustee thereunder in the Official Records of the Clark County Recorder's Office.

7           24.       On June 22, 2009 a trustee's sale was conducted of Property No. 1 and Property No.  
8 2 pursuant to the Deeds of Trust.

9           25.       As of the June 22, 2009 date of the trustee's sale conducted of Property No. 1, the  
10 amount of the Indebtedness (as that term is defined in the Guaranties No. 1) owed by Guarantors to  
11 Bank pursuant to the Guaranties No. 1 was \$2,975,728.42.

12           26.       As of the June 22, 2009 date of the trustee's sale conducted of Property No. 2, the  
13 amount of the Indebtedness (as that term is defined in the Guaranties No. 2) owed by Guarantors to  
14 Bank pursuant to the Guaranties No. 2 was \$2,783,755.38.

15           27.       On July 7, 2009, Fidelity National Title Insurance Company, as Trustee, recorded a  
16 separate Trustee's Deed Upon Sale in the Official Records of the Clark County Recorder's Office  
17 for the trustee's sales of Property No. 1 and Property No. 2 (collectively, the "Trustee's Deeds").

18           28.       Pursuant to the Trustee's Deeds, Bank was the highest bidder at the trustee's sales  
19 conducted and was the purchaser of each of the Properties based on the following credit bid  
20 amounts: \$1,002,971.75 for Property No. 1 and \$435,539.70 for Property No. 2.

21           29.       As of the June 22, 2009 date of the trustee's sale of Property No. 1, Guarantors were  
22 indebted to Bank pursuant to the terms of Guaranties No. 1 in the total amount of \$2,975,740.42,  
23 which was comprised of the principal sum of \$2,464,490.00, plus interest in the amount of  
24 \$470,580.67, plus attorneys' fees and costs in the amount of \$27,686.00, plus foreclosure fees in the  
25 amount of \$12,983.75. On the date of the trustee's sale of Property No. 1, Bank credit bid the  
26 amount of \$1,002,971.75 as set forth in paragraph 28 above and applied the \$1,002,971.75 to the  
27 interest, attorneys' fees and costs, foreclosure fees due and owing with the remaining balance  
28 applied to a portion of the principal amount due and owing pursuant to Guaranties No. 1. As of

1 August 21, 2009, Guarantors are indebted to the Bank pursuant to Guaranties No. 1 in the total  
2 amount of \$2,004,626.12, which is comprised of the principal sum of \$1,972,768.67, plus interest  
3 thereon in the sum of \$29,592.00 from and after June 22, 2009 through August 21, 2009, which is  
4 accruing thereafter at the rate of \$493.20 per day from August 21, 2009 through and including the  
5 date of entry of Judgment, plus attorneys' fees and costs in the amount of \$2,265.45 from June 22,  
6 2009 through and including August 21, 2009, plus additional attorneys' fees and costs from August  
7 21, 2009.

8 30. As of the June 22, 2009 date of the trustee's sale of Property No. 2, Guarantors were  
9 indebted to Bank pursuant to the terms of Guaranties No. 2 in the total amount of \$2,802,372.79,  
10 which was comprised of the principal sum of \$2,367,024.01, plus interest in the amount of  
11 \$396,197.08, plus attorneys' fees and costs in the amount of \$26,600.00, plus foreclosure fees in the  
12 amount of \$12,551.70. On the date of the trustee's sale of Property No. 2, Bank credit bid the  
13 amount of \$435,539.70 as set forth in paragraph 28 above and applied the \$435,539.78 to the  
14 interest, attorneys' fees and costs, foreclosure fees due and owing with the remaining balance  
15 applied to a portion of the principal amount due and owing pursuant to Guaranties No. 2. As of  
16 August 21, 2009, Guarantors are indebted to the Bank pursuant to Guaranties No. 2 in the total  
17 amount of \$2,403,615.34, which is comprised of the principal sum of \$2,366,833.09, plus interest  
18 thereon in the sum of \$34,516.80 from and after June 22, 2009 through August 21, 2009, which is  
19 accruing thereafter at the rate of \$575.28 per day from August 21, 2009 through and including the  
20 date of entry of Judgment, plus attorneys' fees and costs in the amount of \$2,265.45 from June 22,  
21 2009 through and including August 21, 2009, plus additional attorneys' fees and costs from August  
22 21, 2009.

23 31. The total fair market value of the Properties as of June 22, 2009, was \$2,490,000.

## 24 **II. CONCLUSIONS OF LAW**

### 25 **A. Plaintiff's Claims for Relief: Breach of Guaranties**

26 32. Saddle Ridge, Borrower and the Bank entered into Loan Documents No. 1 and Loan  
27 Documents No. 2.

28 . . .

1           33.       The Bank loaned funds to Saddle Ridge and Saddle Ridge accepted the money lent  
2 pursuant to the Loan Documents No. 1 and Loan Documents No. 2.

3           34.       The Guarantors entered into the Guaranties No. 1 and Guaranties No. 2.

4           35.       Saddle Ridge breached Loan Documents No. 1 and Loan Documents No. 2 based on  
5 Saddle Ridge's default of its obligations thereunder by, *inter alia*, failing to make timely payments  
6 under the Loan Documents No. 1 and Loan Documents No. 2.

7           36.       The Guarantors breached the terms of the Guaranties No. 1 and Guaranties No. 2,  
8 based on their default of the obligations due thereunder by, inter alia, failing to make timely  
9 payments thereunder after Saddle Ridge defaulted under its obligations due under the Loan  
10 Documents No. 1 and Loan Documents No. 2.

11          37.       As a result of the breach of the Guaranties No. 1, Plaintiff suffered damage arising  
12 from the outstanding obligation owed by Guarantors pursuant to the Guaranties No. 1.

13          38.       As a result of the breach of the Guaranties No. 2, Plaintiff suffered damage arising  
14 from the outstanding obligation owed by Guarantors pursuant to the Guaranties No. 2.

15          39.       The indebtedness owed by Guarantors pursuant to the Guaranties No. 1 and the  
16 Guaranties No. 2 as of August 21, 2009 is \$4,408,241.46, for which Bank is entitled to a deficiency  
17 judgment against the Guarantors, jointly and severally, in the amount of \$4,408,241.46, plus  
18 additional interest and attorneys' fees incurred by Bank from August 21, 2009 through date of entry  
19 of Judgment.

20                   **B.       Fair Market Value of the Properties**

21          40.       The total fair market value of the Properties of \$2,490,000 as of June 22, 2009, is the  
22 amount used in calculating the deficiency against the Guarantors pursuant to Nevada Revised  
23 Statute § 40.555.

24                   **C.       Affirmative Defenses**

25          41.       Guarantors' affirmative defenses are without merit, on the basis that the Guarantors  
26 have provided no facts in support of their nine affirmative defenses asserted in their Answer to the  
27 Complaint.

28                                   **III.       ORDER**



1 Based upon the findings of fact and conclusions of law pursuant to Rule 52 of the  
2 Federal Rules of Civil Procedure and good cause appearing, it is hereby

3 **ORDERED, ADJUDGED AND DECREED** that Plaintiff Bank of the West's  
4 Motion for Summary Judgment, Memorandum of Points and Authorities in Support of Motion (1)  
5 for Summary Judgment, or in the Alternative, Partial Summary Judgment; and (2) to Determine Fair  
6 Value of Real Property is GRANTED as to liability;

7 **IT IS FURTHER ORDERED** that Judgment pursuant to Guaranties No. 1 as of  
8 August 21, 2009 is \$2,004,626.12 as of August 21, 2009, which is accruing thereafter at the rate of  
9 \$493.20 per day from August 21, 2009 through and including the date of entry of Judgment, plus  
10 additional attorneys' fees and costs from August 21, 2009, be entered, jointly and severally, against  
11 defendants Don G. White, Nevada Pacific Housing Corporation, formerly known as Pageantry  
12 Communities, Incorporated, Pageantry Development Corporation and Western Residential Housing,  
13 LLC, formerly known as Pageantry Residential, LLC.

14 **IT IS FURTHER ORDERED** that Judgment pursuant to Guaranties No. 2 as of  
15 August 21, 2009 is \$2,403,615.34, which is accruing thereafter at the rate of \$575.28 per day from  
16 August 21, 2009 through and including the date of entry of Judgment, plus additional attorneys'  
17 fees and costs from August 21, 2009, be entered, jointly and severally, against defendants Don G.  
18 White, Nevada Pacific Housing Corporation, formerly known as Pageantry Communities,  
19 Incorporated, Pageantry Development Corporation, and Western Residential Housing, LLC,  
20 formerly known as Pageantry Residential, LLC.

21 **IT IS FURTHER ORDERED** that Plaintiff is entitled to recover post-judgment  
22 interest, attorneys' fees and costs incurred in executing and enforcing the Judgment.

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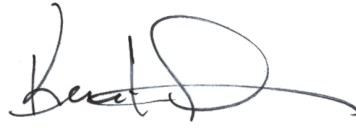
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1 A separate Judgment shall be prepared and submitted to the Court.

2 **IT IS SO ORDERED.**

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4 Date: May 25, 2010

UNITED STATES DISTRICT JUDGE